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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE HONORABLE JAMES C. MAHAN, JUDGE PRESIDING

PHASE II CHIN,
LLC, et al.,

Plaintiffs,

vs.

NO. 2:08-CV-0162-JCM-GWF

FORUM SHOPS, LLC,

PARTIAL MOTION HEARING

Defendant.

(Argument of
Harold Gewerter, Esq.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, MARCH 12, 2009

10:00 A.M.

APPEARANCES:

For the Plaintiffs: HAROLD P. GEWERTER, ESQ.
JEROLD FAGELBAUM, ESQ.
C. STANLEY HUNTERTON, ESQ.
PAMELA R. LAWSON, ESQ.

For the Defendant: CHARLES McCREA, JR., ESQ.
SAMUEL S. LIONEL, ESQ.
STEVE MORRIS, ESQ.

Reported by: Joy Garner, CCR 275

JOY GARNER, CCR 275
LAS VEGAS, NEVADA (702)384-3188

Official Federal Court Reporter

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P R O C E E D I N G S

MR. GEWERTER: Chinois is an upscale restaurant. It's a tenant at the Forum Shops which is an upscale shopping center which is the ground lease owned by Caesar's which is an upscale hotel and casino. We all agree on that. What we don't agree on and what the defendants won't state in this case is they accuse my client

1 of not being an upscale nightclub because it
2 caters to black patrons. And that's the gist of
3 the 1981 allegations here, but they don't come
4 out and say that we don't want minorities in
5 there because you can't say it, although they
6 have done everything else but say it with their
7 actions.

8 What have they done? Every
9 time, or the majority of times, there is a
10 problem where an altercation occurs outside of
11 the Forum -- I'm sorry, outside of the Poetry in
12 the Forum area in Caesar's Palace, and there was
13 two black gentlemen who had a disagreement or an
14 altercation. And what does Forum Caesar's do?
15 They yell to those people from Poetry and they're
16 wrong. They just make that assumption because
17 they don't want black patrons in their
18 establishment.

19 And this case was well pled. In
20 fact, let me give you a couple of instances
21 without going through the whole complaint because
22 that would take hours. On the eve of --
23 Christmas Eve of 2004, there was a party at my
24 client's premises. At that time it was a Jewish
25 singles club, a private party. There wasn't a

1 single black person on the premises that night.
2 There wasn't one. They had to allege there was
3 one, and my client states in the complaint there
4 wasn't one.

5 There was an altercation outside
6 my client's premises between two black gentlemen.
7 What's the first thing that gets yelled at by
8 Forum, that gets yelled at by Caesar's? It's
9 those people at Poetry, OPM, if it wasn't for
10 them, we wouldn't have those problems. That's a
11 false statement which has racial animus, racial
12 hatred. They want to blame every problem they
13 have on Poetry.

14 Another instance we cite,
15 there's an altercation in Caesar's parking lot
16 where two gentlemen, African-Americans, get into
17 an altercation. What's the first thing Caesar's
18 yells -- the one that says there's no contract
19 with my client -- it's those people at Poetry.
20 There's not one shred of evidence that those
21 individuals were patrons at Poetry that evening.
22 In fact, they didn't even have the proper dress
23 code and my client would not have let them in
24 that night.

25 We can go on, and on, and on

1 through all of these situations, and there's
2 numerous instances here which have been well
3 pled. We then hear that, gee, after being here
4 three years, we don't have a lease over here. In
5 essence, we heard Mr. McCrea on behalf of Forum
6 say that my client is a squatter at the premises
7 because you don't have a proper sublease because
8 subleases aren't allowed in our lease. That is a
9 disingenuous and false statement of fact and law.

10 First of all, there was an
11 amendment to the lease between Forum Shops and
12 between Chinois. The amendment to the lease at
13 the insistence of Forum Shops provided for an
14 after-hours club at the premises where Chinois
15 is. They can go to 6:00 a.m. There is an
16 amendment to that lease. My client does not have
17 a sublease. It has a management agreement.

18 Three years after being there,
19 they want to mischaracterize it and say, oh, by
20 the way, we don't have a -- as a matter of fact,
21 now after taking your money for three years,
22 we're going to change this into a sublease
23 because that would violate the master lease.
24 That fails for two reasons. It fails for the
25 first reason because they approved it. Forum

1 Shops in correspondence and in written writing on
2 Forum Shops' letterhead approved the management
3 agreement with my client, Poetry.

4 For them to come here today and
5 say, oh, gee, you are here and there's a
6 sublease, oh, my God, you just snuck one by us,
7 is an absolutely false statement of fact and
8 belies their own written correspondence. And,
9 more importantly, call it what you want, they
10 approved it. Who cares what it's called?
11 They've approved it in writing. They've approved
12 it verbally. They attended the opening of my
13 client's premises. They've been there several
14 times.

15 What they don't like is and what
16 they say wasn't told to them, by the way, when
17 you went in there, is you didn't tell us you were
18 going to have black patrons. And so it's those
19 black people that cause all the problems we have
20 over here, which is false statement, and it's a
21 racially motivated statement. For example,
22 paragraph --

23 THE COURT: Well, I mean I've read all
24 of that, Mr. Gewerter.

25 MR. GEWERTER: Okay, I'll get to the

1 standing issue which is the big issue then. The
2 standing issue here really is also a red herring.
3 First of all, this motion to dismiss and this
4 motion for summary judgment, I think they are
5 going to accept that.

6 THE COURT: But I mean even with that,
7 there's really not enough here for the Court to
8 judge. I mean here's some papers --

9 MR. GEWERTER: That's correct.

10 THE COURT: -- and there's just not
11 enough that I can do it.

12 MR. GEWERTER: And in the Thinket case
13 that they rely upon, Thinket does give standing
14 to a corporation, and Thinket does say, if the
15 corporation suffers discrimination under Section
16 1981 or has acquired an imputed racial identity,
17 it may maintain a cause of action.

18 THE COURT: But I mean that goes back
19 to the Sullivan case, the United States Supreme
20 Court case.

21 MR. GEWERTER: That's correct, and all
22 those cases they're all progeny up to the
23 Sullivan.

24 THE COURT: Yeah, Sullivan versus The
25 Little Hunting Park at 396 U.S. 229 from 1969.

1 MR. GEWERTER: But Mr. Morris cites the
2 Domino's case. What he doesn't read in the
3 Domino's case -- and I'll just read one
4 sentence -- any claim under Section 1981 must
5 initially identify an apparent contractual
6 relationship under which the plaintiff has
7 rights. Such a contractual relationship need not
8 already exist because Section 1981 protects
9 would-be contractors along with those who have
10 already made contracts.

11 We made it clear, and they cite
12 some other cases. You have 1981 racially
13 motivated cause of action when you prevent an
14 individual who seeks to enter into contractual
15 relationships. You don't need an existing
16 relationship. The patrons, that is the customers
17 that go into Poetry have a contractual
18 relationship with Poetry for the free enjoyment,
19 free association, and whatever they do at Poetry.

20 That is what Caesar's is
21 interfering with and that is what Forum Shops is
22 interfering with. For them to say that it's only
23 the contract with Caesar's and, therefore, we
24 don't have a contract with Caesar's is a false
25 statement of law. And it's not the holding of

1 the Domino's case. The United States Supreme
2 Court stated otherwise in a case that was
3 recently submitted to your Honor last week, a
4 case that came out of the United States District
5 Court, District of Maryland, Yesteryear versus
6 Waldorf Restaurants.

7 THE COURT: You submitted that. I had
8 that. I've got that, but Domino's -- I thought
9 you were going to give me the Domino's statement,
10 we've never retreated from what should be obvious
11 from reading the text of the statute. Section
12 1981 offers relief when racial discrimination
13 blocks the creation of a contractual relationship
14 as well as when racial discrimination impairs an
15 existing contractual relationship so long as the
16 plaintiff has or would have rights under existing
17 or proposed contractual relationship.

18 MR. GEWERTER: I was getting there,
19 your Honor.

20 THE COURT: And I mean so I've read it
21 all and both sides briefed it very well, but it
22 just -- we're at the pleading stage. It's notice
23 pleading. I haven't changed my mind.

24 MR. GEWERTER: Well, I appreciate that,
25 your Honor. I don't want any silence to be

1 construed as --

2 THE COURT: I'm not trying to cut you
3 off for any reason other than, you know, you're
4 preaching to the choir at this point.

5 MR. GEWERTER: Well, then I will sit
6 down and stop preaching to the choir, your Honor.

7 THE COURT: I just haven't heard
8 anything to change my mind. We're at the
9 pleading stage. It's notice pleading, and so the
10 defendants are on notice, and I realize some of
11 the arguments they made today I'm going to see
12 again on summary judgment. And the decision may
13 be, to be candid, may be different on summary
14 judgment. I mean I don't know. I don't know
15 what the facts of the case are, but I just think
16 there's enough here that it survives a motion to
17 dismiss.

18 MR. GEWERTER: May I ask for the motion
19 to strike?

20 THE COURT: Absolutely, yeah.

21 MR. GEWERTER: That's just a red
22 herring to hide up the reality of the racial
23 animus, your Honor.

24 THE COURT: I mean you can say that,
25 but that's denied as well. I'm not going to

1 characterize it that way.

2 MR. GEWERTER: Thank you. With that,
3 your Honor, I only took ten minutes, and I know
4 you have another hearing, your Honor.

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7 (Whereupon, Mr. Gewerter concluded.)

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12 I hereby certify that pursuant
13 to Section 753, Title 28, United States Code, the
14 foregoing is a true and correct transcript of the
15 stenographically reported proceedings held in the
16 above-entitled matter.

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16 Date: March 18, 2009

17

/s/ Joy Garner
JOY GARNER, CCR 275
U.S. Court Reporter

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